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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re KELLIE M., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, **Plaintiff and Respondent,** **v.** **KELLIE M.,** **Defendant and Appellant.**	**A120508** **(Solano County Super. Ct. No. J38161)**

Kellie M. appeals from a juvenile court order following a contested jurisdictional hearing. She contends there was insufficient evidence to support a finding that she falsely identified herself to police in violation of Penal Code section 148.9, subdivision (a), because there was insufficient evidence she was lawfully detained or arrested at the time she gave a false name. We will affirm the order.

I. *FACTS AND PROCEDURAL HISTORY*

A petition filed in December 2007 alleged that Kellie came within the provisions of Welfare and Institutions Code section 602, because she provided a false name to a police officer during a lawful detention or arrest, in violation of Penal Code section 148.9, subdivision (a), on October 3, 2007, and on December 9, 2007.

Kellie denied the allegations and filed a motion to suppress evidence pursuant to Welfare and Institutions Code section 700.1. On December 28, 2007, the juvenile court

heard the motion to suppress and conducted a contested jurisdictional hearing on the petition.

A. *Jurisdictional Hearing Evidence*

Evidence was presented at the hearing as to each of the two alleged violations of Penal Code section 148.9, subdivision (a). The evidence included the following.

1. *Count 1 (Providing False Identification on October 3, 2007)*

On October 3, 2007, Vallejo police officer William Badour observed a number of individuals by a parked car, one of whom was smoking a "blunt." Officer Badour approached and, among other things, spoke to Kellie, who was one of the individuals at or in the parked vehicle. Kellie falsely told Office Badour that her name was Savannah Robinson. According to the officer, Kellie was detained at the time she falsely identified herself. In this appeal, Kellie does not dispute that the evidence was sufficient to support a finding that she violated Penal Code section 148.9, subdivision (a), on this occasion.

2. *Count 2 (Providing False Identification on December 9, 2007)*

About 2:00 p.m. on December 9, 2007, Fairfield Police Officer Kevin Carella observed Kellie seated on a fire hydrant, looking at cars as they passed. It appeared she was crying or had been crying. The area was a common site for prostitution.

Officer Carella later saw Kellie walking about 400 yards from her earlier location. She walked very slowly, "kind of like in an 'S' back and forth." She wore tight jeans, a top "that exposed more cleavage than normal," and high heel shoes. She watched vehicles as they passed. Based on his training and experience, the officer believed she might have been engaged in prostitution.

Officer Carella approached Kellie and asked her what she was doing. She replied that she was both walking and waiting for a friend to pick her up. She indicated that passing motorists believed she was engaging in prostitution. The officer asked her if she had any identification, and she replied she had none. Kellie identified herself, falsely, as Katherine M., born on August 16, 1989. Carella asked to inspect her purse for something

bearing her name, and she obliged. He found three unopened condoms and a cell phone in her purse.

Officer Carella testified that the first time Kellie gave a false name was "probably during the initial investigation," and she was not, at that point, detained. However, the officer also testified: "after [the officer] couldn't find any match on her name, [he] told her that she was under arrest and that she would be booked into the hall because she's not going anywhere until [he could] figure out who she was. *She still continued to say that she was Katherine [M.]* and [he] told her again we're not releasing you until we figure out who you are." By that point, the officer testified, Kellie was not free to leave. Officer Carella reiterated in his testimony that Kellie was "not formally detained" when she first gave him a false name, but she was not free to leave "the second, third, fourth and fifth time" she gave a false name. Kellie later admitted to police that she had falsely given her sister's name because Kellie "had a warrant."

B. *Juvenile Court Order*

The court denied the suppression motion, found that the two allegations of providing false identification were true, and sustained the petition. As to the second count, the court found that Kellie first falsely identified herself before she was detained, but also gave a false name to the officer after she was detained: "[the officer] could not get a name from her so what he did was radio[ed] her [name and date of birth] and he said the second, third and I think fourth time she still continued to give the false information. So she was, in fact, arrested at the time that she did that."

The court adjudged Kellie a ward of the court, deemed both violations to be misdemeanors, determined the maximum length of confinement, and placed her on probation subject to various terms and conditions, none of which is challenged here.

This appeal followed.

II. *DISCUSSION*

As mentioned, Kellie's sole contention is that the evidence was insufficient to support count two because she was not lawfully detained or arrested when she provided a false name to the officer. The appeal has no merit.

Penal Code section 148.9, subdivision (a) reads: "Any person who falsely represents or identifies himself or herself as another person or as a fictitious person to any peace officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, *upon a lawful detention or arrest of the person*, either to evade the process of the court, or to evade the proper identification of the person by the investigating officer is guilty of a misdemeanor." (Italics added.) There is no violation of the statute if the person is not under lawful detention or arrest at the time he or she provides the false identification. (*In re Voeurn O*. (1995) 35 Cal.App.4th 793, 795.)

An encounter between police and a citizen is consensual – and not a detention – if a reasonable person would believe that he or she was free to leave or otherwise terminate the encounter. (*Florida v. Bostick* (1991) 501 U.S. 429, 434.) Merely asking an individual for identification does not in itself constitute a detention under the Fourth Amendment, as long as the officer's words and acts are not coercive. (*Bostick, supra*, 501 U.S. at p. 435; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1251.)

Here, Officer Carella testified, and the juvenile court found, that Kellie was not detained when she *initially* gave a false name to the officer.

However, Kellie also gave a false name *after* she was lawfully detained. After she first claimed to be Katherine M., the officer discovered that he "couldn't find any match on her name," suggesting, as the juvenile court found, that he radioed the information provided by Kellie to police dispatch and learned that she had falsely identified herself. The officer then told Kellie she was "under arrest," she would be booked into juvenile hall, and "she's not going anywhere until [the officer] figure[d] out who she was." At that point, a reasonable person would have believed she was not free to leave, and at that point Kellie was detained. (See *California v. Hodari D.* (1991) 499 U.S. 621, 628.)

Kellie thereafter continued to tell the officer falsely – "the second, third, fourth and fifth time" – that her name was Katherine.

Not only was Kellie detained, the detention was lawful. A detention is lawful if justified by an officer's reasonable suspicion that the person has committed or is about to commit a criminal offense. (*Terry v. Ohio* (1968) 392 U.S. 1, 6-7, 21-22; *People v. Souza* (1994) 9 Cal.4th 224, 230-231 (*Souza*).) Reasonable suspicion exists where the officer has " a particularized and objective basis for suspecting [that] the particular person" is involved in criminal activity. (*Souza*, *supra*, 9 Cal.4th at p. 230.) Here, the fact that Kellie was walking the street back and forth in an area known for prostitution, dressed in provocative attire, looking at cars as they drove by, carrying condoms, and gave a name that appeared to be false, was sufficient to provide a reasonable suspicion that Kellie had committed or was about to commit a criminal offense. (See Pen. Code, § 653.22 [unlawful to loiter in a public place with the intent to commit prostitution].)

Substantial evidence supports a finding that Kellie falsely identified herself while being lawfully detained, and that she therefore violated Penal Code section 148.9, subdivision (a).

The juvenile court stated that Kellie was *arrested* by the time she gave false identification and, indeed, the officer told Kellie she was "under arrest." Kellie contends the record does not support a finding that she was lawfully under arrest, because there was insufficient evidence of probable cause.

We need not address this issue. Because Penal Code section 148.9, subdivision (a) applies where the individual was lawfully detained *or* arrested, and there was substantial evidence in this case that Kellie was lawfully detained when she falsely identified herself, we need not also consider whether she was arrested when she falsely identified herself.

In any event, Kellie's probable cause arguments are baseless. "Cause to arrest exists when the facts known to the arresting officer would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that the person arrested is guilty of a crime." (*People v. Price* (1991) 1 Cal.4th 324, 410.) The evidence was sufficient to

create an honest and strong suspicion that Kellie was loitering in a public place with an intent to engage in prostitution. (Pen. Code, § 653.22.)

Kellie urges that "an arrest for suspicion of prostitution would not be lawful" because it was 2:00 in the afternoon, the area was not known for prostitution, her clothing was not shown to be particularly inappropriate, and she was not seen soliciting or engaging in an act of prostitution. Contrary to Kellie's representations, Officer Carella's unrefuted testimony was that the area *was* known for prostitution. He even testified it was an area known for prostitution in the afternoon: "Q. And there are usually prostitutes wearing jeans at 2:00 p.m. around that location? [¶] A. Jeans and high heel shoes and the mannerisms all show somebody that they're available to be picked up. It's not just one thing. [¶] Q. Okay. [¶] A. But the answer to your question, yes, *that's correct*." (Italics added.) Also contrary to Kellie's assertion, there *was* evidence that her clothing was inordinately revealing and consistent with clothing worn by prostitutes.

Furthermore, once Officer Carella detained Kellie after learning from the radio report that she had apparently given a false name, Kellie gave a false name a second time. At that point, she had given the false name while detained and, therefore, there was probable cause to arrest her for violation of Penal Code section 148.9, subdivision (a). She also gave a false name for a "third, fourth, and fifth time," thus falsely identifying herself while under arrest. On this basis as well, the court did not err in finding that Kellie violated Penal Code section 148.9, subdivision (a).

Kellie has failed to establish error.

III. *DISPOSITION*

The order is affirmed.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.